



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7123 OF 2019

**(The Millat Education Society, Darwha, through its Secretary & Ors. Vs. Smt. Rubina Parvin
Ziyaul Mannan Khan & Anr.)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Firdos Mirza, Senior Counsel with Ms Isha Thakre,
Counsel for the petitioners.

Ms Radhika Bajaj, Counsel for respondent no.1.

Mr. H.D. Futane, A.G.P. for respondent no.2/State.

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CORAM : ANIL L. PANSARE, J.
NOVEMBER 28, 2024

The petitioners – Management (original defendant nos. 1 to 3) is aggrieved by judgment dated 19/8/2019 passed by the Presiding Officer, School Tribunal, Amravati, in Appeal No. 47/2015. The School Tribunal has allowed the appeal filed by respondent no.1 (original appellant) and, thus, set aside the order of termination dated 10/11/2014 by which the services of respondent no.1 were terminated. The School Tribunal further directed the petitioners to reinstate respondent no.1 with continuity in service but without monetary benefits.

2] The School Tribunal found that, while conducting enquiry, respondent no.1 was not afforded reasonable opportunity in terms of Rule 37(2)(c) and (d) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “Rules of

1981”), and, thus, the findings given by the Enquiry Committee were not legal and proper.

3] Mr. Firdos Mirza, learned Senior Counsel for the petitioners submits that the finding of the School Tribunal that respondent no.1 was not given reasonable opportunity in terms of Rule 37(2)(c) and (d) of the Rules of 1981, is incorrect. He has taken me through Rule 37 of the Rules of 1981. Sub-rule (1) of Rule 37 provides that the Management shall prepare a chargesheet containing specific charges and hand over the same to the employee by registered post acknowledgment due within seven days from the date on which the Enquiry Committee is deemed to have been constituted. Sub-rule (2)(a) of Rule 37 provides that within ten days of receipt of copy of chargesheet, the employee shall tender written explanation, if so desired. It further provides that the Management and the employee shall communicate to the Convenor the names of witnesses whom they propose to examine. Sub-rule (2)(b) of Rule 37 provides that the Enquiry Committee shall, within the stipulated time, issue notice to the Management and the employee to appear for producing evidence, examining witnesses, etc., if any. Sub-rule (2)(c) of Rule 37 provides that the Enquiry Committee shall see that every reasonable opportunity is extended to the employee for defence of his case. Sub-rule (2)(d) of Rule 37 provides that the Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee. It also provides that the employee shall have the right to be heard in person and lead evidence and also

to cross-examine the witnesses examined on behalf of the Management. It further provides that sufficient opportunities shall be given to examine all witnesses notified by both the parties.

4] The learned Senior Counsel for the petitioners submits that respondent no.1 failed to submit list of witnesses as required under sub-rule (2) of Rule 37 of the Rules of 1981, and, therefore, no grievance can be made that opportunity was not given to her. He further submits that respondent no.1 has cross-examined the witnesses examined by the Management and, thus, complete opportunity was given. Thus, according to the learned Senior Counsel, sufficient opportunity was given to respondent no.1 but she failed to examine any witness in support.

5] As against, Ms. Radhika Bajaj, learned Counsel for respondent no.1 submits that respondent no.1 may not have given list of witnesses in terms of sub-rule (2) of Rule 37 of the Rules of 1981, however, pending enquiry, she wrote a letter on 6/9/2014 stating therein that she herself will remain present as witness on next date and file list of witnesses, if necessary. The learned Counsel further submits that the first meeting was held on 10/9/2014 and the second meeting was held on 22/9/2014. In between, i.e., on 16/9/2014, the aforesaid letter was given. Thereafter, three more meeting were held, which were held on 30/9/2014, 17/10/2014 and 5/11/2014. Respondent no.1, however, was not

given opportunity to lead evidence, and the enquiry was abruptly terminated.

6] In this context, the finding of the School Tribunal appears to me to be relevant, which reads thus :

“17] In the fourth meeting dated 17.10.2014 the appellant and her nominee were present. It is mentioned that both the appellant as well as her nominee conducted cross-examination of said three witnesses. Immediately, it is noted that summary be sent to the appellant (page No. 224). There is no whisper that any opportunity of examining any witness was extended to the appellant. There is abrupt termination of inquiry proceeding at above stage. The appellant in her reply (Article-R-112) objected said fact and stated that, she was not afforded opportunity to examine witnesses. However, the Inquiry Committee had not paid any heed to this reasonable request. Hence, there is clear breach of rule-37(2)(c) and (d) of the Rules. From above details of proceeding it cannot be said that reasonable opportunity was extended to the appellant to defend her case. It seems that the appellant had not notified the list of her witnesses at earlier stage. However, this cannot be a justification to deny her this opportunity at appropriate stage. As a result, I have no hesitation to conclude that there is vital lapse from the Inquiry Committee.”

7] As could be seen, the School Tribunal found that in the minutes of meeting, there is nothing to indicate that an opportunity of examining any witness was extended to respondent no.1. The enquiry was abruptly concluded. Respondent no.1, by filing reply, objected the action of the Enquiry Committee, however, it failed to pay any heed and extend reasonable opportunity. In the circumstances, merely because the respondent no.1 failed to submit list of witnesses within the stipulated

time, will not extinguish her right to defend her case. The action of termination being drastic step, the Enquiry Committee ought to allowed respondent no.1 to examine herself. The Tribunal was, therefore, right in holding that the Management has not afforded reasonable opportunity to respondent no.1 to defend her case.

8] The finding rendered by the School Tribunal appears to be in tune with the Rules of 1981. No interference is called for in writ jurisdiction.

9] The petition is dismissed. No costs.

(ANIL L. PANSARE, J.)

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